OGC 78-1854
24 March 1978

MEMORANDUM FOR: Office of Legislative Counsel

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ATTENTION :

FROM :

Assistant General Counsel

SUBJECT : Proposed "Federal Physicians Pay Act of 1978"

1. You have asked for this Office's comments on the subject proposal which has been forwarded to us by OMB.

2. In general this proposal would provide for an equitable pay system for physician's working in the federal government - both civilian and military. It would also provide a uniform system for defending certain suits arising out of medical malpractice which are brought against physicians working in the federal government.

3. I believe this proposed legislation would be acceptable to the Agency. It authorizes the President to "... establish and put into effect and thereafter modify as he shall see fit the Federal Physician's Pay Plan ...." (Section 5393) A Federal Physician's Pay Board is established to assist the President in implementing the Plan. (Section 5394)

4. One provision which might cause the Agency a problem, as it is presently written, is Subsection 5394(d). That subsection reads as follows:
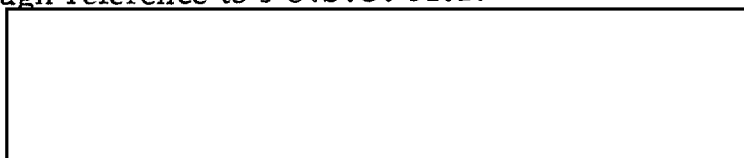
(d) The Board may secure from any agency information, suggestions, estimates, statistics, and technical assistance for the purpose of carrying out its functions. Each such agency shall furnish the information, suggestions, estimates, statistics, and technical assistance to the Board on request of the Board.

However, Subsection 5394(b)(5) directs the Board to:

(5) issue such regulations and policies as may be necessary in carrying out its responsibilities, and issue such guidelines or criteria relating to compatible pay policies and pay determinations which will permit each agency flexibility to meet its specific needs.

This suggests some flexibility in the Board's approach. And, of course, the President retains the authority to modify the Plan as he sees fit. However, the best approach probably would be to modify the language of Subsection 5394(d).

5. It should be noted that this Agency probably is not included within the scope of the proposed bill as presently drafted. There appears to be an assumption that this Agency is included within the terms of Chapter 53 of Title 5, U.S.C. However, the Agency is specifically excluded from Chapter 53 by 5 U.S.C. 5331, through reference to 5 U.S.C. 5102.

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